DIVC 73/16 2016 S NO.7

IN THE HIGH COURT OF SIERRA LEONE
(DIVORCE AND FAMILY DIVISION)

BETWEEN:

ISMAILA SAHID - **PETITIONER**
13 PETER LANE
FREETOWN

AND

MRS AMINATA SAHID (NEE BAH) - **RESPONDENT**
12C LOWER CONGO WATA
FREETOWN

COUNSEL:

ISHMAEL PHILIP MAMIE ESQ for the Petitioner

BEFORE THE HONOURABLE MR. JUSTICE ERNEST GOODING
HIGH COURT JUDGE

JUDGEMENT DATED THE 31ST DAY OF JANUARY 2017.

1. This is an undefended divorce proceeding as the respondent did not file an answer to the Petition. There is evidence on file that the Respondent acknowledges receipt of the petition on the 30th day of May 2016.

2. By a Petition dated the 30th day of May 2016, the Petitioner filed a Petition in Court that his Marriage to the Respondent be dissolved on the ground s of Desertion.
   Paragraph 13 of the Petition reads as follows:
   "THAT THE RESPONDENT DESERTED THE PREMISES OF THE PETITIONER WHILE HE WAS IN THE UNITED STATES OF AMERICA"

3. The Petitioner avers that they were married on the 19th June 2009 at the Registrar General's Office, Roxy Building, Freetown in the Western Area of

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the Republic of Sierra Leone. Thereafter they cohabited at 13 Peter Lane in Freetown aforesaid. There are no issues to the Marriage, though the Respondent has two Children with another man. The Petitioner is permanently resident in the United States of America and the Respondent is domiciled in Sierra Leone. There have been no proceedings in the High Court with reference to the Marriage.

Paragraph 7 of the Petition refers as follows:

"THAT THE PETITION IS PRESENTED AND PROSECUTED IN COLLUSION WITH THE RESPONDENT"

Paragraph 8 of the Petition also reads as follows:

"THAT THE PETITIONER AND THE RESPONDENT WENT TO HIS LAWYER WHEREBY SHE INFORMED HIM SHE WANTED A DIVORCE BECAUSE SHE HAS NO FEELINGS AND LOVE FOR THE PETITIONER AND HAS MADE UP HER MIND TO MOVE ON."

4. The grounds of Desertion alleged are as follows;

   The Respondent deserted the premises I.E. the matrimonial home, 13 Peter Lane whilst the Petitioner was in America and did not return to the Petitioner. According to the Petitioner, when he travelled back to Sierra Leone sometime in 2010 as he had left for the United States two months after the solemnization of the marriage leaving the Respondent at their matrimonial home, he discovered that the Respondent had packed her things out of his house. He informed both their relatives and after several weeks of search discovered that the Respondent had returned back to the father of her two children. The Petitioner and his relatives tried to persuade her to return back to their Matrimonial home but she refused saying her children do not like the Petitioner and have insisted she returned to their father. The Petitioner has also discovered that the Respondent hardly stays in Sierra Leone but spend most of her time in the Republic of Guinea with another boyfriend. The petitioner has not in any way condoled the Respondent.

5. The Petitioner also raised the grounds of Adultery and Cruelty although not pleaded separately.

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ADULTERY

The adulterous relationships mentioned in the Petition are as Follows;

(a)Returning back to the father of the Respondent's children

(b) Spending time in Guinea with another man

CRUELTY

Paragraph 15 of the Petition reads as follows:

"THAT THE PETITIONER HAS SUFFERED BOTH EMOTIONAL AND PSYCHO;LOGICAL STRESS FOR THE PAST SIX (6) YEARS OF MARRIAGE WHICH MAKES IT DIFFICULT FOR HIM TO COME HOME FOR VACATION TO SIERRA LEONE"

6. On the 27th day of May 2016 the Petitioner deposed and swore to an Affidavit verifying the Petition. This is irregular and amounts to putting the cart before the horse. It should either be deposed on or after the Petition is filed. I make no adverse findings as no Appearance or Answer was filed but note Paragraph 4 which reads as follows:
"THAT MY PETITION IS PRESENTED OR PROSECUTED IN COLLUSION WITH THE RESPONDENT"

7. There are several notices on file from the Petitioner's Solicitor requesting that the matter be listed for hearing. Unfortunately the Petitioner's solicitor did not know whether the cause was a Defended or Undefended suit. In fact in one notice dated the 24th October 2016, the Petitioner's Solicitor indicated that the probable length of trial is one month. This is ridiculous as there are no Ancillary Applications and blatant non compliance by the Respondent. It is fortunate that the Registrar spotted the anomaly and set the cause as an undefended cause on the 6th October 2016.

8. Hearing commenced before me on 9th January 2016 and the Petitioners testimony was that he resides at 13 Peter Lane in Freetown. He is a special needs worker in the United States of America. The Respondent is known to him and they got married in 2009 at the Registry office in Freetown. There are no issues in our relationship he said. During our Marriage we resided at 13 Peter Lane in Freetown. Six months after our marriage I left for the United States of America. Before I left for the United States of America

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everything was fine in our marriage. Whilst I was in the United States I sent money to support my wife regularly. At one time I sent 3,000//00 USD (Three Thousand United States Dollars) to the Respondent my wife to pursue her business venture. I was constantly in touch with the Respondent by telephone. After sometime whilst I was in the United States of America the Respondent left the Matrimonial home without telling me. I rented this property i.e 13 Peter Lane, Freetown which is our Matrimonial Home. Because I was unable to communicate with my wife I sent a friend who later contacted her, I was told by my friend that the Respondent was no longer interested in the marriage as she said she was been pested by her two children by a former relationship to return to their father. My friends name is KABBA KARGBO. On receiving this information I requested family leave of absence and returned to Freetown. Sometime in 2010 I cannot remember the exact date I returned to Freetown; I eventually met my wife at my friends' home in Water Lane, East End, Freetown. When I met my wife she told me that I was not satisfying her sexually and also that I snored a lot whilst sleeping. She told me that she only got married to me because her boyfriend was having an affair. I was told by my wife that she was been pressurized to return to her former boyfriend by her children or else they will disown her. I tried to persuade her to stay as my wife but she refused. I was told by my wife after trying to persuade her for over two weeks that even if I gave her the entire world's wealth she was not interested. I involved our God witnesses to persuade my wife to return to me but to no avail. My wife at this stage was staying with her boyfriend and not with me at our Matrimonial Home, 13 Peter Lane, Freetown. I was in love with my wife; I was in a depressed mood as a result of my wife's action. In light of the foregoing I wish the court to dissolve my marriage.

9. There was no Cross Examination.

10. The Matrimonial Causes Ordinance, Chapter 102 of the Laws of Sierra Leone 1960 is the statutory law relating to Divorce. The rules are in CAP 7, Volume 6 of the subsidiary legislation 1960.

Section 4 of the Act states that **"NO PETITION FOR DIVORCE SHALL BE PRESENTED TO THE COURT UNLESS AT THE DATE OF THE PRESENTATION**

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OF THE PETITION THREE YEARS HAVE PASSED SINCE THE DATE OF THE MARRIAGE".

There are however provisions in the legislation whereby the court can allow a presentation of a petition for divorce less than three years of marriage. An example would be where if not allowed to present the petition for Divorce the Petitioner will suffer exceptional hardship.

11. Section 5 of CAP 102 states that there are only three grounds for divorce. The grounds are Adultery, Cruelty and Desertion.

12. ADULTERY: is an act of sexual intercourse between A Male and A Female not married to each other, when at least one of them is married to someone else.

13. CRUELTY: is a behavior by either a husband or wife serious enough to injure a spouse's physical or mental state.

14. DESERTION: is the failure by a husband or wife to cohabit with his or her spouse. It usually takes the form of physically leaving the home but it is not essential as both husband and wife can be living in the same house but not in the same household. An example would be where all element of shared life have ceased, no sexual intercourse, no eating meals together etc. Desertion must be a unilateral act carried out against the wishes of the other spouse with the intention of bringing the marriage to an end. In our jurisdiction the desertion must be continuous for more than three years. Constructive Desertion is the behavior by either a wife or husband causing the other to leave the Matrimonial home, If the behavior is so bad that the party who leaves is forced to do so, it is the spouse who stays behind who is considered in law to have deserted and not the spouse who actually left.

15. SECTION 7 CAP 102 reads as follows:

7(1) On a petition for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties and also to inquire into any countercharge which is made against the petitioner.

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(2)If the court is satisfied on the evidence that-

I. The case for the petitioner has been proved; and
II. Where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty; and
III. The petition is not presented or prosecuted in collusion with the respondent or either of the respondents;

The court shall pronounce a decree of divorce, but if the court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition:

Provided that the court shall not be bound to pronounce a decree of divorce and may dismiss the petition if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the court, the petitioner has been guilty-

a. Of unreasonable delay in presenting or prosecuting the petition; or
b. Of cruelty towards the other part of the marriage; or
c. Where the ground of the petition is adultery or cruelty, of having without reasonable excuse willfully separated himself or herself from, the other party before the adultery or cruelty complained of; or
d. Where the ground of the petition is adultery or desertion, of such willful neglect or misconduct as has conduced to the adultery or desertion.

16.I find the Petitioner credible, honest and truthful.

17. On the evidence before me I am satisfied on a balance of probability that the Facts have been proved, and that some of the requirements of Sections4, 6, 7 and 8 of CAP 7 of the Matrimonial Causes Rules have been met.

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18. That the petition was brought more than 3 years after the celebration of the marriage.

19. That the Petitioners petition for a decree is on the basis of the Respondent's desertion and that three years has elapsed between the date of desertion and the date the petition was prosecuted. I will not dwell on this alleged desertion as it will be futile.

20. I am discarding the allegations of Cruelty and Adultery as they were not specifically pleaded.

21. However I will now consider paragraph 7 on the petition, it reads as follows:

"THAT THE PETITION IS PRESENTED IN COLLUSION WITH THE RESPONDENT"

Continuing Paragraph 8 reads thus:

"THAT THE PETITIONER AND RESPONDENT WENT TO HIS LAWYER WHEREBY SHE INFORMED HIM SHE WANTED A DIVORCE BECAUSE SHE HAS NO FEELINGS AND LOVE FOR THE PETITIONER AND HAS MADE UP HER MIND TO MOVE ON."

22. Again in respect of the sworn Affidavit of the Petitioner dated 27th May 2016, Paragraph 4 reads as follows:
"**THAT MY PETITION IS PRESENTED OR PROSECUTED IN COLLUSION WITH THE RESPONDENT"**

23. The aforementioned contravene Section 7 (2) iii of the Act which reads as follows:
"THE PETITION IS NOT PRESENTED OR PROSECUTED IN COLLUSION WITH THE RESPONDENT BUT IF THE COURT IS NOT SATISFIED WITH RESPECT TO ANY OF THE AFORESAID MATTERS, IT SHALL DISMISS THE PETITION"

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24. On the evidence before me I am not satisfied that some of the requirements in Section 7 have been met especially with regards to collusion.

WHAT IS COLLUSION?

Collusion means an agreement or bargain between the parties to a suit or their agents whereby the initiation of the suit is procured or its conduct provided for. It applies particularly to an agreement not to defend, even where the agreement is disclosed to the court and where no one else is able to indicate any fact which is being falsely dealt with or withheld because the court cannot allow itself to be hampered, in ascertaining for itself whether there is danger of a husband, or wife "obtaining a divorce contrary to the justice of the case".

This definition was cited with approval in LOWNDES V. LOWNDES, (1950) P. 223,229; (1950) I ALL E.R. 999, 1004,1004, which was followed in Teale V. Burt (otherwise Teale) and Burt, (1951) P.438; (1951)2 ALL E.R. 433,C.A.

Unless the court is satisfied that no collusion exist between the parties to a suit in Sierra Leone for dissolution of marriage the petition must be dismissed. If one part of a petition is tainted with collusion the whole petition must be dismissed.

In Pollard (falsely called Wybourn) V. Wybourn (1828), I Hag. Ecc. 725,726; it was said that collusion is not presumed without something to raise the presumption.

In this suit the Petitioner raised the subject of collusion both in his petition and also his sworn Affidavit contending that he presents the petition in collusion with the Respondent.

In view of the aforesaid I hereby dismiss the petition.

25. NO ORDER FOR COSTS

THE HONOURABLE MR. JUSTICE ERNEST GOODING

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